Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules	)	DR-_____
Pertaining to the	)	RM-_____
Regulation of	)	
Cellular Carriers	)	

TO: Chief, Tariff Division

REQUEST FOR DECLARATORY RULING AND PETITION FOR RULEMAKING

CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION

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January 29, 1993

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SUMMARY

The recent decision in AT&T v. FCC found permissive detariffing contrary to Section 203(a) of the Communications Act of 1934 ("Act"). The court's ruling, which appears to implicate all common carriers engaged in interstate services, did not address those services which are outside the scope of the FCC's jurisdiction.

The Commission has applied a long-standing policy that cellular carriers, because of the essentially intrastate nature of cellular services, are not required to file federal tariffs for services governed by Section 221(b) of the Act. CTIA requests that the Commission issue a declaratory ruling reaffirming the continued validity of this policy.

The federal tariffing requirements set forth in Section 203(a) of the Act do not apply to "connecting carriers". CTIA seeks a declaratory ruling that cellular carriers engaged in interstate communication exclusively through interconnection with the facilities of unaffiliated interexchange carriers are subject to the tariff filing exception applicable to connecting carriers.

CTIA requests a ruling that cellular carriers are non-dominant. The competitive nature of the cellular industry makes cellular carriers appropriate candidates for non-dominant status. Moreover, since the interstate component of cellular service represents a small segment of cellular business

generally, and only a tiny fraction of interstate telecommunications overall, cellular carriers clearly are not in a position to exercise market power over interstate calling.

CTIA also requests that the Commission initiate a rulemaking proceeding to adopt rules which would relieve cellular carriers of the obligation to submit any data except copies of their rate schedules for interstate services. CTIA further requests that Sections 61.58(b) and 61.59 be amended to eliminate the notice period for cellular tariffs and to permit tariff amendments at any time. The Commission possesses ample authority to take the requested actions.

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REQUEST FOR DECLARATORY RULING
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The Cellular Telecommunications Industry Association ("CTIA"), [1/] by its attorneys, hereby submits a Request for Declaratory Ruling and Petition for Rulemaking, pursuant to Sections 1.2 and 1.401 of the Commission's Rules, for purposes of obtaining regulatory relief following the decision of the United States Court of Appeals for the District of Columbia Circuit in AT&T v. FCC. [2/] Specifically, CTIA requests that the Commission:

- Issue a declaratory ruling reaffirming its long-standing policy that cellular carriers, because of the essentially intrastate nature of cellular service, are not required to file federal tariffs for services governed by Section 221(b) of the Communications Act;

- Clarify that the "connecting carrier" exception to the federal tariff filing

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1/ CTIA is the principal trade association representing the cellular industry. More than 90 percent of the cellular operators licensed by the Commission are owned and operated by CTIA general members. CTIA's general membership also includes cellular equipment manufacturers, support service providers, and others with an interest in the cellular industry.

2/ AT&T v. FCC, No. 92-1053, slip op. (D.C. Cir. Nov. 13, 1992).

requirement embodied in Section 203(a) is applicable to cellular carriers who are engaged in interstate communication exclusively through interconnection with the facilities of an unaffiliated inter-exchange carrier;

- Declare that cellular carriers are "non-dominant" and thus subject to streamlined regulation; and

- Amend Part 61 of the Rules to substantially simplify the tariff filing requirements applicable to cellular carriers.

I. THE COMMISSION SHOULD CLARIFY THE SCOPE OF THE FEDERAL TARIFFING REQUIREMENT AS APPLIED TO CELLULAR CARRIERS

Common carriers classified as non-dominant were relieved of the obligation to file federal tariffs pursuant to the "permissive detariffing" scheme established by the Commission in the Competitive Carrier proceeding. [3/] On November 13, 1992, however, the U.S. Court of Appeals for the District of Columbia Circuit in AT&T v. FCC found permissive detariffing contrary to

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3/ Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (CC Docket No. 79-252), Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979)("Competitive Carrier"); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982), recon., 93 FCC 2d 54 (1983); Second Further Notice of Proposed Rulemaking, FCC No. 82-187, 47 Fed. Reg. 17,308 (1982); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983)("Fourth Report"); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984), recon., 59 Rad. Reg. 2d (P&F) 543 (1985); Sixth Report and Order, 99 FCC 2d 1020 (1985)("Sixth Report"), rev'd sub nom. MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985)(MCI v. FCC).

Section 203(a) of the Act and vacated the Fourth Report. Given the breadth of Section 203(a)'s language, the court's ruling appears to implicate all common carriers engaged in interstate services. Accordingly, CTIA seeks a declaratory ruling that (i) the Commission does not intend to subject cellular carriers to federal tariffing requirements except to the extent they provide interstate services not subject to Section 221(b) of the Act, [4/] and (ii) cellular licensees that are engaged in interstate communication exclusively through inter-connection with the facilities of an unaffiliated interexchange carrier are operating as "connecting carriers" and therefore are not subject to a federal tariff filing requirement.

A. The Commission Should Reaffirm That Cellular Carriers Need Not File Tariffs With The Commission For Services Governed by Section 221(b) of the Act

The ruling in AT&T v. FCC appears to subject all common carriers to a tariff filing requirement under Section 203(a) of the Communications Act ("Act"). The opinion, however, did not address services which are outside the scope of the FCC's jurisdiction. In this connection, the Commission has consistently taken the view that cellular service, which is essentially intrastate and only incidentally interstate, is not subject to the FCC's tariffing jurisdiction. Accordingly, CTIA requests that the Commission issue a declaratory ruling confirming that this

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[4/] As described below, services governed by the Section 221(b) exception would be cellular exchange-like services, not interstate resale or access services.

long-standing policy remains unchanged notwithstanding the decision in AT&T v. FCC.

In AT&T v. FCC, the court reversed portions of the Competitive Carrier proceeding without addressing the FCC's jurisdiction under Section 221(b). That Section provides that the Commission may not assert jurisdiction over:

> charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof even though a portion of such exchange service constitutes interstate or foreign communications, in any case where such matters are subject to regulation by a state commission or by local governmental authority. [5/]

Thus, Section 221(b) reserves to the states jurisdiction over the charges for essentially intrastate services which may also have an incidental interstate component. The Commission has eschewed federal tariff regulation of mobile services providers for decades on this basis.

The Commission's decision not to require mobile carriers to file federal tariffs, except in very limited circumstances, dates at least as far back as 1965. [6/] This policy is

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[5/] 47 U.S.C. § 221(b).

[6/] See Public Notice, 1 FCC 2d 830 (1965) as repeated ten years later, Public Notice, 53 FCC 2d 579 (Com. Car. Bur. 1975). The limited circumstances in which interstate tariffs would be required was "where an RCC applies a charge for its portion of interstate message toll services furnished through interconnection with a landline carrier. . . . " Id. See also MTS/WATS Market Structure, 97 FCC 2d 834 (1984). "Like wireline telephone companies, RCCs [including (continued...)

grounded on the premise that mobile radio services are essentially local in nature. In this connection, the Commission has observed on numerous occasions that mobile services are intrastate communications services, and often exchange services, within the meaning of Section 2(b) and 221(b) of the Communications Act. [7/]

The Commission has often reiterated these same conclusions with respect to cellular services. [8/] On the basis of this understanding, the Commission appropriately adopted cellular rules in which it asserted federal primacy over technical

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[6/](...continued)
cellular carriers] provide interstate services only to the extent that their facilities may be used to originate or terminate toll calls." Id. at 883.

[7/] See, e.g., MTS/WATS Market Structure, 97 FCC 2d at 882 ("we have consistently treated the mobile radio services provided by RCCs and telephone companies as local in nature."); Mobile Radio Services, (Gen. Dkt. No. 80-183, 93 FCC 2d 908, 920 (1983) ("because paging services have historically been local in nature, the states have traditionally regulated paging common carriers").

[8/] See, e.g., Cellular Communications Systems, 86 FCC 2d 469, 483-84, 504 (1981); The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 RR 2d 1275, 1284 (1986)("Radio Common Carrier Services") ("In view of the fact that cellular carriers are generally engaged in the provision of local, intrastate, exchange telephone service, the compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern"); TPI Transmission Services, Inc. v. Puerto Rico Telephone Co., 4 FCC Rcd. 2246 (1989); MTS/WATS Market Structure, 97 FCC 2d 834. Moreover, in the context of construing the AT&T consent decree, the courts have also recognized that "two-way mobile telephone and one-way paging services are 'exchange telecommunications'" services. United States v. Western Elec. Co., 797 F.2d 1082, 1089 (D.C. Cir. 1986) cert denied, 480 U.S. 922 (1987). United States v. Western Elec. Co., 578 F. Supp. 643, 650 (D.D.C. 1983)(recognizing the local nature of cellular services).

standards and licensing issues, but expressly reserved to the states, "in accordance with Sections 2(b) and 221(b) of the Act" "jurisdiction with respect to charges, classifications . . . or regulations for [cellular] service . . . . " [9/] In keeping with this regulatory framework, during the early phases of the cellular licensing process the Commission rejected arguments against various applicants' resale proposals on the basis that "[t]hese specific complaints relate to the rates, terms and conditions of an intrastate exchange service and should be addressed to the state commission in the first instance." [10/] Since that time, the Commission has reiterated that cellular carriers are not subject to a federal tariffing requirement. [11/]

The Commission's recognition that cellular service is largely local in nature is based on a careful and logical analysis of how the industry operates. To begin with, licensing areas were designed around the concept of Metropolitan Statistical Areas and Rural Services Areas ("RSAs"), geographical

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9/ Cellular Communications Systems, 89 FCC 2d 58, 96 (1982). Moreover, states were allowed to require separate subsidiaries for the provision of cellular services "in order to effectively perform their duties regarding the economic regulation of cellular operations." Id. at n.64.

10/ Miami CGSA, Inc., Memorandum Opinion and Order, File No. 26019-CL-L-84 (Com. Car. Bur. May 31, 1984) at 13 ¶ 15; See also Pittsburgh SMSA Limited Partnership, Memorandum Opinion and Order, File No. 27057-CL-L-84 (Mob. Serv. Div. Oct. 23, 1984 at 9-10 ¶ 14.

11/ See Letter of Gerald Brock, Chief, Common Carrier Bureau, to William Roughton, Bell Atlantic Mobile Systems (October 18, 1988) ("Cellular radio service is not now tariffed").

configurations which are themselves primarily local in nature. [12/] Moreover, the overwhelming percentage of cellular calls are completed within the MSA or RSA of origination and are therefore jurisdictionally intrastate, and the vast majority of interstate traffic that is originated or terminated on cellular systems is transmitted over the facilities of interexchange carriers. And while consumers may incur airtime charges from the cellular carrier for the cellular airtime associated with interstate calls, such airtime is charged separately and is independent of the interstate or intrastate nature of the call.

For purposes of clarification, CTIA submits that Section 221(b), which refers to services "subject to" regulation by the states, would apply in those states where the state commission is empowered to regulate cellular and has simply declined (affirmatively or otherwise) to exercise its jurisdiction. Such a ruling is consistent with the plain words of the statute, [13/] and is supported by the legislative history surrounding the provision. [14/]

[12/] RSAs were intentionally drawn along state and county lines to protect natural, social and economic communities. See Amendment of the Commission's Rules for Rural Cellular Service, 60 RR (P&F) 2d 1029, 1033 (1986).

[13/] Congress could have used the term "regulated by" instead of "subject to" had it intended to require actual regulation by the states.

[14/] In discussing Section 221, both the House Report and Senate Report accompanying S. 3285 state in the same words: "Paragraphs (b), (c), and (d) conform to the recommendations of the State commissions, and will enable those commissions, where authorized to do so, to regulate exchange services in metropolitan areas overlapping State lines." S. Rep. No.

(continued...)

Finally, while the precise scope of Section 221(b) is unclear, CTIA submits that cellular operations within MSAs covering more than one state should be governed by Section 221(b). [15/] This conclusion logically flows from the fact that the decision in which the Commission established geographic boundaries for license applications based on Standard Metropolitan Statistical Areas ("SMSAs")(or combined SMSAs in some circumstances), many of which encompassed more than one state, was the very same decision in which the Commission, citing Section 221(b), expressly reserved to the states jurisdiction over cellular service rates. [16/] There is no sound reason to jettison this policy now.

Accordingly, CTIA submits that while the ruling in AT&T v. FCC may by implication subject common carriers to a tariff filing requirement under Section 203(a) of the Act, it did not address those services which are outside the scope of the FCC's tariff jurisdiction. Therefore, because the Commission has consistently declared that cellular service is essentially intrastate and only incidentally interstate, the Commission should issue a declaratory confirming that, notwithstanding the decision

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[14/](...continued)
781, 73d Cong., 2d Sess. at 5 (1934); H.R. Rep. No. 1850, 73d Cong., 2d Sess. at 7 (1934).

[15/] These operations include exchange-like services, not interstate resale or access.

[16/] See Cellular Communications Systems, 89 FCC 2d at 86-89, 96 (1982).

in AT&T v. FCC, cellular carriers are required to file federal tariffs only for services not governed by Section 221(b). [17/]

The applicability of Section 221(b) to a particular cellular operation becomes more complicated, however, when MSAs or MSAs and RSAs are integrated to form an interstate cellular system. There may be situations where service within such systems may properly fall within the scope of Section 221(b), [18/] but these operations would need to be reviewed on a case-by-case basis to determine whether a federal tariffing exemption is appropriate.

17/ In CTIA's view, Section 221(b) would not appear to be applicable in circumstances where: (i) the cellular systems operate in states where the enabling statute does not authorize regulation of cellular services (it is unclear whether Section 221(b) would apply in an MSA covering two states where only one of the state commission's is authorized to regulate cellular); (ii) the cellular carrier applies a charge separate from airtime for its portion of interstate message toll service furnished through interconnection with a landline carrier. See Public Notice, 53 FCC 2d 579 (Com. Car. Bur. 1975); and (iii) cellular carriers resell the interexchange services of other carriers. This activity would, however, be subject to the streamlined tariffing requirements applicable to resellers.

18/ Since multistate "super systems" linking numerous MSAs and RSAs provide service which is more than incidentally intrastate, Section 221(b) would not apply.

B. Cellular Carriers Who Act As "Connecting Carriers" Should Be Deemed Exempt From Federal Tariffing Requirements

The federal tariffing requirements set forth in Section 203(a) of the Act do not apply to "connecting carriers." Connecting carriers are defined in Section 152(b)(2) of the Act as "any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling, controlled by, or under direct or indirect common control with such carrier." [19/] CTIA submits that many cellular carriers meet the statutory definition of connecting carrier and, as such, need not file tariffs with the Commission. Again, this matter was not at issue in AT&T. CTIA thus seeks a ruling confirming the applicability of Section 152(b)(2) to qualifying cellular carriers.

Most interstate traffic which is originated or terminated on a cellular system is not carried over the cellular carrier's facilities, but rather the facilities of interexchange carriers. Cellular customers are often presubscribed to an interexchange carrier of their own choosing, or to interexchange service provided by the cellular carrier on a resale basis. In many instances the interstate segment of a call is hauled by an interexchange carrier with no affiliation to the cellular licensee. Those cellular licensees that neither haul their own interstate traffic nor use the facilities of an affiliated entity would appear to fit within the connecting carrier definition.

[19/] 47 U.S.C. § 152(b)(2).

Moreover, the purpose of Section 2(b)(2) was to exempt small independent telephone companies from certain aspects of the Commission's jurisdiction. Congress felt that such entities should not be subject to federal jurisdiction by virtue of their connection with a toll line for long distance calls. [20/] In essence, the connecting carrier exemption was created to ensure that smaller companies, posing no monopolistic threat, would only be subject to a minimum of federal regulation. [21/] Since cellular licensees are generally small in size [22/] and pose no threat to either inter or intrastate competition, [23/] Congressional intent would not be thwarted by classifying these entities as connecting carriers.

The Commission has suggested that any carrier which provides interstate communication through "indirect" connection

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20/ See Comptronics, Inc. v. Puerto Rico Tel. Co., 553 F.2d 701, 706 (1977). See also 78 Cong. Rec. 8846 (remarks of Senator Clark).

21/ See id.

22/ Cellular carriers are much smaller than Puerto Rico Telephone Company ("PRTC") which has been classified as a connecting carrier. See Comptronics, Inc., supra. As of December 31, 1991, the total number of access lines operated by PRTC was 906,047. See Statistics of Communications Common Carriers (Federal Communications Commission), 1991-92 ed. forthcoming 1993).

23/ While the Commission could not establish whether the cellular service market is fully competitive, it did conclude that facilities-based carriers are competing on the basis of market share, technology, service offerings, and service price." Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028, 4029 (1992). See also MetroMobile CTS v. NewVector Comm., 892 F.2d 62, 63 (9th Cir. 1989)(rejecting claim that the FCC's licensing of cellular services has led to market power -- even during the headstart period).

with an affiliated carrier might be excluded from connecting carrier status. [24/] In other words, the Commission tentatively viewed the word "solely" in Section 2(b)(2) as perhaps excluding a carrier that participates in the same communication even if the affiliated carriers do not connect directly with each other. This theory ("indirect connection theory") was raised in the context of whether the BOCs should be classified as connecting carriers, but the Commission expressly did not rule on the theory's validity since the BOCs were found not to be connecting carriers because of their ownership and operation of interstate toll lines. [25/] For the reasons noted below, CTIA submits that the indirect connection theory should not be applied to the operations of cellular carriers.

First, the language of Section 2(b)(2) refers to "physical connection." The only physical connection in which the cellular carriers are engaged under the indirect connection theory (whether on the originating or terminating end) is with unaffiliated interexchange carriers. The cellular carriers in this hypothetical are thus "solely" engaged in interstate communication through physical connection with the facilities of unaffiliated carriers. As such, they appear to be operating as connecting carriers.

[24/] See Declaratory Ruling on the Application of Section 2(b)(2) to Bell Operating Companies, 58 RR 2d 830 (1985)("BOC Decision").

[25/] See Declaratory Ruling on the Application of Section 2(b)(2) of the Communications Act of 1934 to Bell Operating Companies, 2 FCC Rcd 1750, 1754 (1987).

Second, the Commission has ruled on occasion that holding company subsidiaries that could be described as establishing indirect connections with an affiliated subsidiary in other states are connecting carriers. [26/] This precedent should be applied here.

Finally, the Commission has never expressly determined that the indirect connection theory is valid. It is important to note that the theory was raised in the context of the Commission's jurisdiction over the BOCs, large LECs which Congress likely did not intend to fall within the connecting carrier definition. Cellular carriers, in contrast, are small [27/], their involvement in interstate communication is extremely minor, and they are already subject to FCC jurisdiction if they resell interstate services. An analysis of the applicability of Section 2(b)(2) to these entities should take these factors into account.

CTIA also submits that the assessment of connecting carrier status should be conducted on a market-by-market basis. For example, a cellular licensee operating a system in State A should be deemed a connecting carrier if it satisfies the necessary criteria in that market, even though it is under common

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[26/] See BOC Decision, supra, 58 RR 2d at 832; Barron County Telephone Co., 5 FCC 33, 35-36 (1937).

[27/] Cellular services are much less widely used than their landline counterparts, whether measured in terms of total subscribers (less than 5 percent of the population) or minutes of use (0.4 percent). See U.S. Dept. of Com., 1991 U.S. Indus. Outlook at 29-2; Mobile Phone News at 5 (March 30, 1989)(minutes of cellular use less than 0.4 percent of landline use).

ownership with a system in State B which does not meet the connecting carrier standard.

Accordingly, CTIA requests a ruling that cellular licensees that are engaged in interstate communication exclusively through interconnection with the facilities of an unaffiliated interexchange carrier should be deemed connecting carriers exempt from the tariff filing requirements of Section 203(a). [28/]

C. Roaming Services Generally Are Not Subject To Federal Tariffing Requirements

Apart from the Section 221(b) and connecting carrier tariff filing exemptions, CTIA submits that traditional roaming services -- where a roamer customer from a different state places calls on the serving (or "host") carrier's system in the same manner as the host carrier's own customers -- are not subject to any federal tariffing requirements beyond the requirements that apply to the services offered the serving carrier's own customers. Roaming services of this nature are typically governed by intercarrier roaming agreements between the home and host carriers. These intercarrier agreements need not be filed with the Commission under the Sierra-Mobile doctrine. [29/] Moreover, the service provided is, in essence, a billing and collection function which is not even a common carrier offering.

28/ If they otherwise satisfy the necessary criteria, the BOC cellular affiliates should also be deemed connecting carriers. While the BOCs are not connecting carriers, they are also not interexchange carriers. As long as there is no affiliation between the cellular company and the entity that carries the call across state lines, the exemption should apply.

29/ See MCI v. FCC, 665 F.2d 1300 (1981).

If there is no roaming agreement between the roamer's home system and the host system, the roamer would have to enter into a direct arrangement with the host system to obtain service. If the carrier assesses a separate charge for interstate services made available to the roamer, an FCC tariff may be required. However, if roamers are provided interstate services in the same manner as provided to home customers, no independent tariff obligation should arise.

A tariff filing requirement may well arise in connection with so-called "call delivery" or "follow-me roaming" services. Such services allow a caller to reach a cellular subscriber who is out-of-state by calling the subscriber's local cellular number. In this connection, the Commission has held that:

> some cellular carriers provide their customers with a service whereby a call to a subscriber's local cellular number will be routed to them over interstate facilities when the customer is "roaming" in a cellular system in another state. In this case, the cellular carrier is providing not a local exchange service but interstate, interexchange service." 30/

Clearly, if the carrier hauls the interstate call over its own facilities, a federal tariffing obligation would result. But it is not entirely clear whether the Commission's finding is intended to apply in all circumstances where the call is handed off in the home system to an unaffiliated interexchange carrier for delivery to the host system.

30/ Radio Common Carrier Services, 59 RR 2d 1275, 1284, n.3 (1986).

II. THE FCC SHOULD DECLARE THAT CELLULAR CARRIERS ARE NON-DOMINANT AND FURTHER STREAMLINE THE TARIFF FILING PROCESS FOR SUCH CARRIERS

A. The Commission Should Declare That Cellular Carriers Are Non-Dominant

In the Fourth Report and Order, the Commission stated that it would consider petitions from carriers seeking a determination of non-dominant status. [31/] The Commission has never had occasion to address the cellular industry in this context because cellular carriers are not subject to a federal tariffing requirement for reasons independent of the policies adopted in the Competitive Carrier proceeding. Nonetheless, the decision in AT&T v. FCC may prompt cellular carriers to file federal tariffs in certain circumstances. CTIA requests a ruling conferring non-dominant status on cellular carriers so that they can avail themselves of the streamlined tariff filing requirements and procedures applicable to other non-dominant carriers. [32/]

Petitions by carriers requesting non-dominant status must address "the relevant product and geographic markets, supported by factual evidence of demand and supply substitutability, and market power, supported by factual evidence of the level and change in market shares and entry." [33/] The competitive nature of

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31/ Fourth Report, 95 FCC 2d at 582.

32/ As discussed infra at 20-26, CTIA requests that the Commission modify its Part 61 Rules to further simplify the tariff filing process.

33/ Fourth Report, 95 FCC 2d at 582.

the cellular industry makes cellular carriers appropriate candidates for non-dominant status.

Competition in the cellular industry is robust, and the business is characterized by rapidly expanding demand. The cellular industry reached the million-customer mark in 1987, [34/] and the number of subscribers in the United States exceeded 6.3 million by 1991. [35/] The growth rate for new subscribers was greater in the first half of 1992 than in any previous six-month period. [36/] CTIA estimates that there are now more than 10 million subscribers.

In addition, facilities-based competition now exists as a result of the FCC's rules and licensing schedule. By the end of 1992 there were 1,483 cellular systems, almost double the number of systems in existence only two years earlier. [37/] The number of new cell sites also continues to grow dramatically, [38/] and the move toward digitalization will lay the groundwork for increased demand.

The explosive growth of the cellular industry is largely attributable to the Commission's adoption of rules and polices designed to promote a competitive environment. The

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34/ Geodesic Network II 1993 Report on Competition in the Telephone Industry ("Geodesic Network II") at 4.22.

35/ Id.

36/ Id.

37/ Id. at 4.23 (See Table 4.4).

38/ Id.

Commission's decision in 1981 to license two cellular carriers per market was based on the premise that competition would "foster important public benefits of diversity of technology, service and price, which should not be sacrificed absent some compelling reason." [39/] The Commission concluded three years later that its licensing policies had "resulted in a highly competitive market structure in which two carriers with different histories and different approaches vie with one another in the marketplace." [40/]

The Commission's rules have promoted competition in the cellular industry. Market shares have fluctuated significantly since 1984, and despite the headstart for wireline carriers in many markets, non-wireline licensees have attained nearly equal market share in total and have exceeded the market share of the wireline carrier in some markets. [41/] Penetration rates for both wireline and non-wireline carriers are comparable. [42/]

As demand has grown, the price for cellular service has dropped. The price for cellular telephones has dropped seven-fold since cellular service was first introduced, [43/] and the inflation-adjusted price of equipment and service combined has

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39/ An Inquiry Into the Use of Bands 825-845 MHz and 870-890 MHz for Cellular Communications Sys., 86 FCC 2d 469, 478 (1981).

40/ Cellular Lottery Rulemaking, 98 FCC 2d 175, 196 (1984).

41/ Assigning PCS Spectrum: An Economic Analysis of Eligibility Requirements and Licensing Mechanisms, National Economic Research Assoc., Inc. (November 9, 1992) at 10.

42/ Id.

43/ Geodesic Network II at 4.23.

dropped by more than 50 percent. [44] According to the 1991 U.S. Industrial Outlook, "[t]he cost of local cellular service declined 6 percent in 1990, while the average length of a call remained about the same (2-3 minutes). [45]

With respect to substitutability of services, there are a variety of services that can serve as alternatives to cellular. Paging and Specialized Mobile Radio ("SMR") services, for example, present two available options. Moreover, the Commission has authorized Fleet Call to reconfigure its SMR services in ways that will permit such services to provide a direct substitute for cellular. [46] The Commission's allocation of spectrum for personal communications services and mobile satellite services will soon provide additional alternatives to existing cellular services and, of course, the landline telephone network is nearly ubiquitous.

The primarily local nature of cellular is another important factor in assessing whether non-dominant status is appropriate. The interstate component of cellular service represents a small segment of cellular business generally, and only a tiny fraction of interstate telecommunications overall. [47]

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[44] Id.

[45] Id.

[46] Fleet Call, Inc., 6 FCC Rcd 1533 (1991).

[47] Cellular interexchange services appear to be less than 0.5 percent of landline interexchange services in terms of minutes of use. See Aff. of Charles L. Jackson and Richard P. Rozek, Table 4 (figures for State of Florida), Attachment B to Motion of BellSouth Corporation for a Waiver of Section

(continued...)

Viewed from this perspective, cellular carriers clearly are not in a position to exercise market power over interstate calling. It makes little sense to confer non-dominant status on an inter-exchange carrier the size of MCI, yet retain the dominant classification for cellular carriers which are engaged in interstate services to an extremely limited extent by comparison.

CTIA believes that the cellular industry satisfies the standard for non-dominant status, and requests that the Commission issue a ruling to that effect. This will ensure that any tariffs filed by cellular carriers will be subject to the same streamlined procedures applicable to other non-dominant carriers.

B. The Commission Should Amend Part 61 Of The Rules To Simplify The Tariff Filing Procedures For Cellular Carriers

CTIA requests that Section 61 of the Rules be modified, in the manner described below, to simplify the tariff filing process for cellular tariffs. For the reasons which follow, cellular carriers should only be required to file copies of their rate schedules for all applicable interstate services. Consideration should also be given to adopting a rule allowing cellular carriers to submit tariffs which reflect "banded rates", that is, rates within a prescribed minimum and maximum level. Fluctuation of rates within these levels would not require the submittal of tariff revisions.

47/ (...continued)
II(D) of the Modification of Final Judgment to Allow Bell-South Corporation to Provide Integrated MultiLATA Cellular Services (May 9, 1991).

Section 203(a) of the Act provides, in pertinent part, that "[e]very common carrier . . . shall . . . file with the Commission . . . schedules showing all charges for itself . . . and showing the classifications, practices, and regulations affecting such charges. . . ." [48/] Since this Section mandates only that common carriers must file the schedule of charges for their interstate services (showing classifications and applicable regulations), the Commission appears free to fashion regulations governing the precise scope and nature of the information to be submitted. [49/]

Prior to the Competitive Carrier proceeding, all carriers were required to support their tariff proposals with extensive cost and other economic data as set forth in Section 61.38 of the Rules. This requirement, the Commission concluded,

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[48/] Section 203(c) provides further that:

> [N]o carrier . . . shall engage or participate in [interstate] communications unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall . . . charge, demand, collect, or receive a greater or less or different compensation, for such communications, or for any service in connection therewith . . . than the charges specified in the schedule then in effect. . . .

[49/] Section 203(b)(2) provides that the "Commission may, in its discretion and for good cause shown, modify any requirement made by or under authority of this section either in particular instances or by general order applicable to special circumstances or conditions . . . ." Although this provision, as interpreted in AT&T v. FCC, did not authorize the FCC to eliminate the tariff filing requirement in its entirety, nothing in the decision can be read to preclude the Commission from prescribing the substance of such filings.